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November 2, 2021

Via ECF

Hon. Louis L. Stanton, U.S.D.J.  
 United States District Court  
 Southern District of New York  
 500 Pearl Street  
 New York, NY 10007

Re: *FTC, et al. v. Quincy Bioscience Holding Co., Inc., et al.*  
Case No. 1:17-cv-00124-LLS

*Pre-motion conference held.  
 Objection overruled. Sano  
 deposition to be rescheduled.*

*Louis L. Stanton*

*11/12/21*

Your Honor:

We represent Defendants in this action. Pursuant to Local Rule 37.2 and Section 2.A. of Your Honor's Individual Practice Rules, we write to request a pre-motion conference to discuss Defendant's anticipated motion to compel further deposition testimony from Plaintiffs' expert witness, Dr. Mary Sano. Specifically, Defendants seek to compel Dr. Sano to identify the portion of the Federal Trade Commission's Dietary Supplements: An Advertising Guide For Industry ("FTC Guidance" available at <https://www.ftc.gov/tips-advice/business-center/guidance/dietary-supplements-advertising-guide-industry>) she reviewed on the day prior to her deposition and to compel Dr. Sano to respond to deposition questions with respect to the FTC Guidance.

During initial questioning by Defendants' counsel at her deposition on October 22, 2021, Dr. Sano repeatedly testified that she had not reviewed the FTC Guidance, which was marked as an exhibit at her deposition. (See, e.g., Ex. A at 34:20-35:4; 35:13-22; 36:8-12.) After Defendants concluded their initial questioning of Dr. Sano and following a nearly hour-long break, Dr. Sano abruptly changed her testimony when questioned by counsel for the FTC. The FTC's counsel asked Dr. Sano whether she "would like to modify [her] answer, that [she] gave previously" concerning whether she had seen the FTC Guidance (*Id.* at 258:18-259:6; 263:19-264:6.) She testified that she did wish to modify her testimony. (*Id.* at 263:25-264:7.) Next, the FTC's counsel asked Dr. Sano whether she had "seen [the FTC Guidance] prior to today[.]" (*Id.* at 264:18-19.) Dr. Sano then testified—in contrast to the position she had taken when questioned by Defendants' counsel—that she had "not seen the whole document" but "would clarify and say that [she's] seen a paragraph from the document" on the day prior to her deposition. (*Id.* at 264:20-22.)

Defendants' counsel then asked Dr. Sano some follow up questions about which paragraph she reviewed from the FTC Guidance, but the FTC's counsel objected on the grounds of attorney work product, and instructed Dr. Sano not to answer Defendants' counsel's question. (*Id.* at 266:15-23.)

November 2, 2021

Plaintiffs' position finds no support in the law. The identity of the paragraph of the FTC Guidance that Dr. Sano reviewed on the day before her deposition is simply not attorney work product. Defendants did not—and do not intend to—ask Dr. Sano questions that would require her to divulge conversations that she had with Plaintiffs' counsel. Defendants are, however, entitled to know which paragraph she reviewed. It is clear that Plaintiffs' counsel agrees on this point, as they permitted their other expert witnesses to answer questions identifying the documents they reviewed in preparation for their depositions, and insisted that one of Defendants' expert witnesses identify documents that he reviewed in advance of his deposition. In fact, to the extent Dr. Sano considered this paragraph in connection with her opinion in this action, Plaintiffs were required to disclose such materials under the Federal Rules of Civil Procedure, but have failed to do so.<sup>1</sup> (See Fed. R. Civ. P. 26(a)(2) (parties' expert must provide "the facts or data considered by the witness in forming" his or her opinion.)

This issue is critical because none of Plaintiffs' experts were able to testify that the scientific evidence, including the results of Quincy Bioscience's clinical trials, failed to meet the FTC's own standard for substantiation ("competent and reliable scientific evidence"), as set forth in applicable case law and the FTC Guidance. Indeed, none of Plaintiffs' experts had even reviewed the FTC Guidance prior to rendering the opinions contained in their respective reports. It was only after Defendants had finished questioning all of the Plaintiffs' experts that Dr. Sano suddenly had the epiphany (which appeared nowhere in either of her reports) that she had reviewed one paragraph of the FTC Guidance on the day prior to her deposition.

Accordingly, Defendants request a pre-motion conference to discuss their anticipated motion to compel or, in the alternative, request an Order directing Plaintiffs to identify the portion of the FTC Guidance that Dr. Sano reviewed the day before her deposition. Defendants also request an Order directing Plaintiffs to make Dr. Sano available for questioning under oath, at Defendants' discretion, with respect to the FTC Guidance. Defendants specifically left Dr. Sano's deposition open and, at that time, there was approximately 52 minutes remaining for Defendants' questioning on the record.

Respectfully submitted,

/s/ *Geoffrey W. Castello*

Geoffrey W. Castello

/s/ *Michael B. de Leeuw*

Michael B. de Leeuw

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<sup>1</sup> Dr. Sano did not cite, nor did she refer to, the FTC Guidance in either her affirmative report or her rebuttal report.

# Exhibit A

Page 1

1 Sano - rough draft

2 THE VIDEOGRAPHER: Good morning,  
3 counsel. My name is Phil Rizzuti. I am a  
4 legal videographer in association with  
5 TSG Reporting, Inc.

6 Due to the severity of the COVID-19  
7 and following the practice of social  
8 distancing, I will not be in the same room  
9 with the witness. Instead, I will record  
10 this videotaped deposition remotely.

11 The reporter, Jeffrey Benz, also will  
12 not be in the same room and will swear the  
13 witness remotely.

14 Do all parties stipulate to the  
15 validity of this video recording, and  
16 remote swearing, and that it will be  
17 admissible in the courtroom as if it had  
18 been taken following Rule 30 of the Federal  
19 Rules of Civil Procedure and the state's  
20 rules where this case is pending?

21 MS. METZINGER: Yes for the Quincy  
22 corporate defendants.

23 MR. GLENNON: Yes for the FTC.

24 THE VIDEOGRAPHER: Thank you.

25 MS. MATUSCHAK: Yes for the New York

<p>1 Sano - rough draft 2 State Attorney General's office. 3 THE VIDEOGRAPHER: Thank you. 4 This is the start of media labeled 5 Number 1 of the video-recorded deposition 6 of Dr. Mary Sano, in the matter of the 7 Federal Trade Commission and the People of 8 the State of New York, by Letitia James, 9 Attorney General of the State of New York, 10 versus Quincy Bioscience Holding Company, 11 Inc., a corporation, et al., in the United 12 States District Court for the Southern 13 District of New York, 14 Case Number 117 CV 00124 LLS. 15 This deposition is being held on 16 October 22, 2021, at approximately 17 10:01 a.m. 18 My name is Phil Rizzuti. I am the 19 legal video specialist from TSG Reporting, 20 Inc. The court reporter is Jeffrey Benz in 21 association with TSG Reporting. Counsel 22 please introduce yourself. 23 MS. METZINGER: Good morning. Jaclyn 24 Metzinger from Kelley Drye &amp; Warren for the 25 Quincy corporate defendants. And I have</p>	<p>Page 2</p> <p>1 Sano - rough draft 2 with me today my colleagues, Geoffrey 3 Castello, Glenn Graham, and Lauren 4 Margolies. 5 MR. DE LEEUW: Michael de Leeuw on 6 behalf of Mark Underwood. I have with me 7 today Tamar Wise. 8 MR. GLENNON: This is Edward Glennon 9 for the Federal Trade Commission. Also 10 participating for the FTC are attorneys 11 Andrew Warren and Annette Soberats and 12 investigator Will Ducklow. 13 MS. MATUSCHAK: This is Kate 14 Matuschak, and I'm here for the New York 15 State Attorney General's office. 16 THE VIDEOGRAPHER: Thank you. 17 Will the court reporter please swear 18 in the witness. 19 DR. MARY SANO, 20 called as a witness, having been first 21 duly sworn by Jeffrey Benz, a Notary 22 Public within and for the State of New 23 York, was examined and testified as 24 follows: 25 EXAMINATION BY MS. METZINGER:</p>
<p>1 Sano - rough draft 2 Q. Good morning, Dr. Sano. We met 3 briefly before we got on the record, but again, 4 my name is Jaclyn Metzinger. And I represent 5 the Quincy corporate defendants -- excuse me -- 6 in this matter. 7 Have you been deposed before, 8 Dr. Sano? 9 A. I have. 10 Q. How many times have you been deposed? 11 A. I'm not sure. It's been many years. 12 Q. Would you say less than five times? 13 A. Maybe between five and ten times. 14 Q. And have those depositions been given 15 in your professional capacity or personal 16 capacity? 17 A. They have. 18 Q. Were you designated as an expert 19 witness in any of the matters in which you gave 20 a deposition? 21 A. I was. 22 Q. In all of them? 23 A. Yes. 24 Q. And do you recall any of the names of 25 the cases in which you gave your deposition?</p>	<p>Page 4</p> <p>1 Sano - rough draft 2 A. I do not. 3 Q. Do you recall whether you were 4 retained as an expert on behalf of the plaintiff 5 or the defendant in those cases? 6 A. I had -- on both. 7 Q. Have you ever been retained as an 8 expert witness by the Federal Trade Commission 9 in a prior matter? 10 A. I have not. 11 Q. Have you ever been retained as an 12 expert witness by the New York Attorney 13 General's office? 14 A. I have not. 15 Q. Have you ever been retained as an 16 expert witness by any other governmental agency? 17 A. I think I have. By the U.S. Attorney 18 General. 19 Q. Do you recall what that matter 20 involved? 21 A. I don't recall. 22 Q. Have any of the matters in which 23 you've been retained as an expert witness 24 involved a dietary supplement product? 25 A. They have not.</p>

<p style="text-align: right;">Page 34</p> <p>1                   Sano - rough draft</p> <p>2 "competent and reliable scientific evidence,"</p> <p>3 has been incorporated into any state or federal</p> <p>4 law?</p> <p>5                   MR. GLENNON: Objection. Outside the</p> <p>6 scope of the witness's expert report in</p> <p>7 this matter.</p> <p>8                   You can answer, Dr. Sano.</p> <p>9                   A. Okay. Yeah. I -- I don't know.</p> <p>10                  I've not looked at the law so...</p> <p>11                  Q. Okay. And do you agree that Prevagen</p> <p>12 is a dietary supplement?</p> <p>13                  A. I don't know how it's -- what -- how</p> <p>14 it identifies itself. I don't know that it's</p> <p>15 specific dietary supplement medical food, et</p> <p>16 cetera.</p> <p>17                  Q. It's not a drug, though, correct?</p> <p>18                  A. I don't know that it markets itself as</p> <p>19 a drug or that it is a drug.</p> <p>20                  Q. Are you familiar with the document</p> <p>21 titled "Dietary Supplements and Advertising</p> <p>22 Guide for Industry"?</p> <p>23                  A. I am not.</p> <p>24                  Q. You've never reviewed the -- I'm going</p> <p>25 to refer to this document as the FTC guidance.</p>	<p style="text-align: right;">Page 35</p> <p>1                   Sano - rough draft</p> <p>2 You've never reviewed the FTC guidance before?</p> <p>3                   A. I do not -- I don't recall that I</p> <p>4 have.</p> <p>5                   Q. And do you recall seeing references to</p> <p>6 the FTC guidance in the expert reports that</p> <p>7 are -- have been submitted by Quincy?</p> <p>8                   A. I believe there was references to the</p> <p>9 guidance.</p> <p>10                  Q. And --</p> <p>11                  A. In -- I would need a review to see</p> <p>12 exactly what was said there.</p> <p>13                  Q. And after seeing references to the FTC</p> <p>14 guidance in Quincy's expert reports, you did not</p> <p>15 then go and review the FTC guidance?</p> <p>16                  A. No, I did not.</p> <p>17                  Q. So you're not offering an opinion</p> <p>18 today rebutting anything that Quincy's experts</p> <p>19 had said with respect to the FTC guidance?</p> <p>20                  A. I don't believe I am. My -- my</p> <p>21 commentary is based on the work that I reviewed,</p> <p>22 the primary works that I reviewed.</p> <p>23                  Q. And are you offering an opinion that</p> <p>24 the marketing claims for Prevagen comply with</p> <p>25 the FTC guidance?</p>
<p style="text-align: right;">Page 36</p> <p>1                   Sano - rough draft</p> <p>2                   A. I'm not making any statements about</p> <p>3 the marketing claims.</p> <p>4                   Q. Are you aware that the FTC guidance</p> <p>5 has its own definition of "competent and</p> <p>6 reliable scientific evidence"?</p> <p>7                   A. I'm not aware.</p> <p>8                   Q. Is there any reason why you chose not</p> <p>9 to review the FTC guidance after seeing</p> <p>10 references to it in Quincy's experts' reports?</p> <p>11                  A. It wasn't part of the work I was</p> <p>12 engaged to do.</p> <p>13                  Q. And can you explain to me exactly what</p> <p>14 your assignment was in this case?</p> <p>15                  A. It was --</p> <p>16                  MR. GLENNON: Excuse me, sorry.</p> <p>17                  Sorry, could you read -- I didn't hear the</p> <p>18 question. Could you please -- could the</p> <p>19 court reporter read it back, please.</p> <p>20                  (The record was read back.)</p> <p>21                  MR. GLENNON: Thank you.</p> <p>22                  A. I believe it's as stated as in the</p> <p>23 report. I was reviewing the -- the material</p> <p>24 that was provided to me to determine if it was</p> <p>25 coming to conclusions that one would expect,</p>	<p style="text-align: right;">Page 37</p> <p>1                   Sano - rough draft</p> <p>2 given the standards of how that data is</p> <p>3 collected.</p> <p>4                   Q. And that standard is your definition</p> <p>5 of "competent and reliable scientific evidence";</p> <p>6 is that correct?</p> <p>7                  MR. GLENNON: Objection.</p> <p>8                  A. Yes. My standard is the standards of</p> <p>9 the material in the field -- of the expectations</p> <p>10 in the field.</p> <p>11                  Q. Did you draft that phrase, "competent</p> <p>12 and reliable scientific evidence"? Did you come</p> <p>13 up with that phrase for your report?</p> <p>14                  A. I believe I did. I edited -- I</p> <p>15 created the first version of the report, and I</p> <p>16 believe it was in there, but I'm not -- I'm not</p> <p>17 sure.</p> <p>18                  It may have -- the words may have</p> <p>19 occurred separately. I don't remember the</p> <p>20 versions.</p> <p>21                  Q. And -- but you said that you don't</p> <p>22 recall seeing that exact phrase prior to</p> <p>23 being -- working in this case. Is that correct?</p> <p>24                  A. Can you ask the question again?</p> <p>25                  Q. Sure. I believe you testified earlier</p>

Page 258		Page 259	
1	Sano - rough draft	1	Sano - rough draft
2	MR. GLENNON: Objection.	2	6:38 p.m. and we are going off the record.
3	A. What people know. Marketing claims.	3	(A recess was taken from 6:38 to
4	Q. And you're not qualified to offer an	4	time .)
5	opinion on whether a marketing claim is	5	THE VIDEOGRAPHER: The time is
6	adequately substantiated. Is that correct?	6	7:28 p.m. and we are back on the record.
7	MR. GLENNON: Objection.	7	EXAMINATION BY MR. GLENNON:
8	A. I don't know about marketing claims.	8	Q. Hi, Dr. Sano.
9	I know about claims about cognition	9	So, earlier, today, you were asked
10	and memory.	10	about clinical meaningfulness with regard to the
11	MS. METZINGER: I don't have any	11	Madison Memory Study. Do you remember that?
12	further questions. Thank you for your	12	A. I do.
13	time, Dr. Sano.	13	Q. Okay.
14	THE VIDEOGRAPHER: Is that it? Anyone	14	And paragraph 13 of your rebuttal
15	else?	15	report, which is Exhibit 2, can I direct you to
16	MR. DE LEEUW: Nothing for Mark	16	that paragraph, please?
17	Underwood.	17	A. Okay. I'm there.
18	MR. GLENNON: Okay, this is Ed Glennon	18	Q. Okay.
19	for FTC. I would like to take a break. We	19	So, for the record, the first sentence
20	might have some clarifications questions	20	of that paragraph reads, finally with regard to
21	for -- or cross, rather.	21	the results of the Madison Memory Study I see no
22	THE VIDEOGRAPHER: Okay.	22	evidence that any purported improvements on the
23	MR. GLENNON: Can we go off the	23	cog state tasks would be clinically meaningful.
24	record.	24	Do you see that statement?
25	THE VIDEOGRAPHER: The time is	25	A. I do.
Page 260		Page 261	
1	Sano - rough draft	1	Sano - rough draft
2	Q. Do you still agree with that statement	2	Q. Did you consider standards in that
3	in your report?	3	field when opining on what constitutes competent
4	A. I do.	4	and reliable scientific evidence, in this case?
5	Q. Okay.	5	A. Yes, I did.
6	A. Yes.	6	MR. DE LEEUW: Objection to the form
7	Q. Okay. And could you -- take a look at	7	of the question. W sorry.
8	the rest of that paragraph, there.	8	Q. Okay. You can answer it Dr. Sano.
9	A. Uh-huh. Yes.	9	A. Yes, I did.
10	Q. Paragraph 13. Do you still stand by	10	Q. Do you consider yourself to be an
11	the other statements made in paragraph 13?	11	expert in the field of cognitive impairment?
12	A. I do.	12	A. I do. Yes.
13	Q. Okay.	13	Q. Did you consider standards in that
14	Do you consider yourself to be an	14	field when appointing on what constitutes
15	expert in the field of memory?	15	competent and reliable scientific evidence, in
16	A. Yes. I do.	16	this case?
17	Q. Okay. Did you consider standards in	17	A. I did.
18	that field of memory when opining on what	18	MR. DE LEEUW: Objection to form.
19	constitutes competent or reliability scientific	19	Q. What was your answer, Dr. Sano?
20	evidence in this case?	20	A. Yes, I did.
21	A. I did. Yes.	21	Q. Okay.
22	Q. Okay.	22	And do you -- yourself to be an expert
23	Do you consider yourself to be an	23	in the field of neuro psychology?
24	expert in the field of cognition?	24	A. Yes, I do.
25	A. Yes.	25	Q. And did you consider standards in that

<p style="text-align: right;">Page 262</p> <p>1                    Sano - rough draft 2 field when opining on what constitutes competent 3 and reliable scientific evidence, in this case? 4                    MR. DE LEEUW: Objection to the form 5 of the question. 6                    A. Yes, I did. 7                    Q. Okay. 8                    And do you consider yourself to be an 9 experts notice field of neuroscience of aging 10 and dementia? 11                  A. Yes, I'm an expert in those areas. 12                  Q. Okay. Did you consider standards in 13 those feels when opining on what constitutes 14 competent and reliable scientific evidence, in 15 this case? 16                  MR. DE LEEUW: Object to the form of 17 the question. 18                  A. Yes, I did. 19                  Q. Okay. 20                  Now, you've testified earlier today, 21 also about the protocol, and standards, for 22 standards in the field of clinical trials, for 23 reporting elements of a protocol. Do you 24 remember that? 25                  A. I do.</p>	<p style="text-align: right;">Page 263</p> <p>1                    Sano - rough draft 2                    Q. Did you consider the protocol of the 3 Madison Memory Study in determining whether the 4 analyses of the AD8 zero to 1 and zero to 2 sub 5 groups were post hoc? 6                    MR. DE LEEUW: Objection to the form 7 of the question. Leading. 8                    A. I did. Consider it. The protocol 9 didn't mention them. And I considered them to 10 be after the protocol was developed. 11                  Q. Have you stated in your report, that 12 the protocol does not refer to the subgroup 13 analyses? 14                  MR. DE LEEUW: Object to the form. 15                  A. I -- stated in the report that 16 there's -- that there was no description of 17 those subgroups in the protocol. 18                  Q. Okay. 19                  Okay. And I will refer you to the 20 document that was marked earlier today as 21 Exhibit 3. 22                  Do you see that? 23                  Do you see it? 24                  A. I do see it, yes. 25                  Q. Okay. And were you asked about</p>
<p style="text-align: right;">Page 264</p> <p>1                    Sano - rough draft 2 whether you had seen that document, prior to 3 today? 4                  A. Yes, I was asked that. 5                  Q. Okay. A would you like to modify your 6 answer, that you gave previously? 7                  A. Yeah. Yes. Thank you. I -- 8                  MS. METZINGER: Objection. Hold on, 9 Dr. Sano. I'm going to place an objection 10 to that question. 11                  THE WITNESS: I'm sorry. 12                  Okay. 13                  A. I didn't hear what you said, it broke 14 up. So where do we -- 15                  MR. DE LEEUW: We were both note be 16 our objections. 17                  A. Okay. 18                  Q. Have you seen that document prior to 19 today? 20                  A. I have not seen the whole document. I 21 would clarify and say that I've seen a paragraph 22 from the document. 23                  Q. Okay. I have no -- 24                  A. I -- I saw the paragraph, I did not 25 receive the document.</p>	<p style="text-align: right;">Page 265</p> <p>1                    Sano - rough draft 2                    MR. GLENNON: Okay. I have no further 3 questions. 4                    MS. METZINGER: We're going to have to 5 take another break. Can we take five 6 minutes, please. 7                    THE VIDEOGRAPHER: The time is 8 7:34 p.m., and we are going off the record. 9                    (A recess was taken from 7:34 to 10 7:39.) 11                  THE VIDEOGRAPHER: The time is 12 7:39 p.m. and we are back on the record. 13 EXAMINATION BY MS. METZINGER: 14                  Q. Dr. Sano, did you speak with any other 15 experts in the field of memory to determine 16 whether they agree with the opinions set forth 17 in your report? 18                  A. Did not. 19                  Q. Did you speak with any other experts 20 in the field of cognition to determine whether 21 they agreed with the opinions expressed in your 22 reports? 23                  A. I did not. 24                  Q. Did you speak with any experts in the 25 field of cognitive impairment to determine</p>

<p style="text-align: right;">Page 266</p> <p>1                   Sano - rough draft      2 whether they agreed with the opinions expressed      3 in your reports?      4       A. I did not.      5       Q. Did you speak with any other experts      6 in the field of neuropsychology to determine      7 whether they agree with the opinions expressed      8 in your report?      9       A. I did not.      10      Q. Did you speak with any experts in the      11 field of neurosciences of aging and dementia, to      12 determine whether they agreed with the opinions      13 expressed in your report?      14      A. I did not.      15      Q. I would like to draw your attention      16 back to Exhibit 3, please.      17      A. To Exhibit 3, is that what you said?      18 DIR Q. Yes.      19           Which paragraph in this document have      20 you seen before today?      21          MR. GLENNON: I'll object. On the      22 basis of work product, and instruct the      23 witness not to answer that.      24      Q. Are you --      25      MR. DE LEEUW: She assessed, just want   </p>	<p style="text-align: right;">Page 267</p> <p>1                   Sano - rough draft      2 to respond to the objection she testified      3 that she saw one paragraph. I think --      4 we're then allowed to ask her which      5 paragraph that was. You can say that --      6 you can certainly -- you know interpose an      7 objection about any discussion you had      8 about it but she specifically testified      9 that she reviewed a paragraph. And      10 therefore we're entitled to find out what      11 that was.      12          MR. GLENNON: I disagree.      13          Q. Dr. Sano when did you see this      14 unidentified paragraph from Exhibit 3?      15          A. Yesterday.      16          Q. Was that the first time that you saw      17 this -- this paragraph from the unidentified      18 Exhibit 3?      19          A. It is.      20          Q. And is that why it's not listed in      21 your report?      22          A. That's correct.      23          Q. Either your reports?      24          A. That's correct.      25          MR. GLENNON: Objection.   </p>
<p style="text-align: right;">Page 268</p> <p>1                   Sano - rough draft      2        Q. Did counsel remind you, over a break,      3 that he had shown you this paragraph yesterday      4 in preparation for today's deposition?      5        A. I don't recall whether or not counsel      6 reminded me or I recalled it as we were meeting.      7        Q. Did you have that recollection during      8 a conversation with counsel over the break?      9        A. Did I -- I did have the recollection.      10 Over the --      11      Q. While you were speaking with counsel      12 over a break?      13      A. I did.      14      Q. Dr. Sano, did you see the unidentified      15 referenced paragraph, prior to submitting either      16 of your reports in this case?      17      A. Never.      18      MS. METZINGER: And Mr. Glennon, I      19 just wanted to confirm that you're      20 directing Dr. Sano not to identify which      21 paragraph of the dietary supplement      22 guidelines that she has reviewed prior to      23 today, are you instructing her not to answer?      24      MR. GLENNON: Yes, I am.      25      MS. METZINGER: Okay. Then we're   </p>	<p style="text-align: right;">Page 269</p> <p>1                   Sano - rough draft      2 going to have to leave Dr. Sano's      3 deposition open because we're going to go      4 to seek a ruling from Judge Stanton on that      5 point. The despite of -- a fair amount of      6 this deposition today, has been based on      7 the fantastic that Dr. Sano testified that      8 she had never seen the FTC dietary      9 supplement guide prior to today's      10 deposition. And we're going to reserve the      11 right to question Dr. Sano about that      12 paragraph, and any other paragraphs from      13 the dietary supplement guidance that we see      14 fit.      15      A. So can I make a comment.      16      MR. GLENNON: Hold on. I understand      17 your position, Jaclyn, I disagree with it,      18 I don't believe you're entitled to keep the      19 deposition open. I think -- which      20 paragraph she reviewed, is -- which -- the      21 that we reviewed with her is privileged so      22 yes that's the basis of my instruction.      23      And I -- ask the witness not to --      24      MS. METZINGER: I will disagree with      25 that, and I will remind you that during   </p>